

11 October 2012

Brighton & Hove City Council

Subject: Community Rights under the Localism Act 2011

Date of Meeting: 11th October 2012

Report of: Interim Lead Chief Executive's Services

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1. SUMMARY AND POLICY CONTEXT:

- 1.1 The Localism Act 2011 introduced a number of new rights which are intended to empower communities. The Community Right to Challenge is now in force and gives the opportunity to communities to express an interest in running council services. The Community Right to Bid is expected to come into force this autumn and will give the local community the opportunity to nominate public and private land to be part of a register of "assets of community value" held by the local authority. If and when an asset on the register is subsequently put up for sale, the community is given a specific opportunity to bid for it.
- 1.2 This report explains how the new rights work and proposes a system for administration of the new rights by the Council.

2. RECOMMENDATIONS: That Policy and Resources Committee:

- 2.1 Notes the introduction of the Community Right to Challenge and the Community Right to Bid and the new rights they afford to local communities;
- 2.2 Approves a window of opportunity for expressions of interest under the Community Right to Challenge as set out at paragraph 3.13 of the report;
- 2.3 Approves the proposed procedure for administering an expression of interest under the Community Right to Challenge as set out in Appendix 1, including delegation to the relevant Strategic Director or Director the assessment of timescales for determining expressions of interest, within a minimum and maximum time period of 6 to 26 weeks;
- 2.3 Grants delegated authority to the Head of Property and Design and to the Head of Law to take all steps necessary to comply with the statutory obligations placed on the Council in relation to the Community Right to Bid, including authority to determine appeals and claims for compensation;
- 2.4 Instructs officers to publicise details of the Community Right to Challenge and the Community Right to Bid on the Council's website, and in Town Halls and libraries, including how to submit expressions of interests and nominations.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF EVENTS:

THE COMMUNITY RIGHT TO CHALLENGE

- 3.1 The Community Right to Challenge under the Localism Act 2011 (the Act) came into force on 27th June 2012. Under this new right, local authorities must consider expressions of interest by “relevant bodies” in providing council services. Where an expression of interest is accepted, the Act requires councils to carry out a procurement exercise for the service.

Expressing an interest – ‘relevant bodies’

- 3.2 The Act allows expressions of interest from:-

- voluntary and community bodies;
- organisations set up for solely charitable purposes;
- parish councils; and
- two or more employees of the council.

- 3.3 The Statutory Guidance also states that relevant bodies may submit an expression of interest in partnership with other relevant or non-relevant bodies – for example, private firms – and states that this sort of cooperation may strengthen a relevant body’s case in terms of demonstrating it is capable of delivering the service.

Expressing an interest – ‘relevant services’

- 3.4 The Right to Challenge applies to any **service** provided by – or on behalf of – a local authority in the exercise of its functions, unless specifically excluded by the Regulations.
- 3.5 The Right to Challenge does not apply to council **functions**, which remain the responsibility of the authority. For example, the Right to Challenge would not apply to decisions about which services to provide, where they are located or funding. These are decisions for the authority about the exercise of its functions..
- 3.6 The Right to Challenge will also apply to shared, jointly commissioned or jointly provided services with other local authorities.
- 3.7 Under the Regulations a number of health and children’s services are excluded from the Right to Challenge, either permanently, or in most cases, until April 2014. Services excluded until April 2014 are those currently commissioned jointly or under a partnership agreement between a local authority and an NHS body and any services commissioned by an NHS body on behalf of a local authority. Children’s centre services are also excluded until April 2014.
- 3.8 Services that relate to named individuals with complex needs, and services managed through direct payments, are permanently excluded.

Requirements for the submission of expression of interest

- 3.9 Information that is required in the expression of interest is:-

- Information about the financial resources of all involved;
- Evidence that the organisation will be capable of providing the relevant service by the time of any procurement exercise
- Information about the outcomes to be achieved, including how these will promote or improve the social, economic or environmental well-being of the area, and meet the needs of service users
- In the case of employees of the authority, details of how other employees will be engaged and affected.

Grounds for rejection of an expression of interest

- 3.10 An expression of interest may be rejected only on grounds set out in the Regulations. The grounds for refusal are set out in **Appendix One**.
- 3.11 The Council will need to show that it has given proper consideration to an expression of interest and that it has considered whether the organisation making the submission should be asked to provide more information before rejecting a submission where information is lacking.

A window of opportunity for expressions of interest

- 3.12 The Council has a choice as to whether it wishes to specify periods during which expressions of interest can be submitted (for example, having regard to commissioning and budget cycles). The alternative to specifying periods during which expressions of interest can be made is to receive submissions at any time.
- 3.13 It is proposed that the Council sets a window of opportunity of April 1st to June 30th for expressions of interest, commencing on 1st April 2013. In relation to services currently delivered by another organisation through a contract with the Council, it is proposed that the Council will receive expressions of interest during the period of 3 months starting 15 months and ending 12 months before the contract expiry date (based on the initial term of the contract). For example, if a contract expires on 31.12.14 – expressions of interest would be received between 1.10.13 and 31.12.13. This approach would provide certainty and clarity both for potential bidders and the Council.

Procurement exercise

- 3.14 It is important to be clear that the acceptance of an expression of interest simply initiates a procurement exercise. There is no advantage or preferential treatment afforded to the bidders who have used the Community Right to Challenge and no guarantee they will be awarded the contract.
- 3.15 Once an authority accepts an expression of interest for a relevant service it must carry out a procurement exercise. The procurement exercise must be appropriate having regard to the value and nature of the contract that may be awarded. Councils will need to comply with normal public procurement law requirements. The Guidance requires authorities to consider both Best Value and social value considerations, in accordance with the most recent Best Value Guidance and the Public Services (Social Value) Act 2012.

Administration of the Community Right to Challenge

- 3.16 A flow chart setting out the proposed process for dealing with an expression of interest is attached at **Appendix Two**. It is proposed that information on the Community Right to Challenge is made available on the Council's website and that the initial point of contact is the Procurement Team, who will then identify the service and refer the request to the relevant Strategic Director or Director. The Strategic Director or Director would consider the relevant elements of the bid with legal and procurement support and then prepare a report for consideration by Policy and Resources Committee. The report would need to incorporate legal, procurement and financial advice, and seek a decision from Members on the acceptance or rejection of the expression of interest.

COMMUNITY RIGHT TO BID

- 3.17 The Government is concerned about the loss to communities of local facilities such as shops, pubs, libraries and open spaces which have been closing or sold and developed for private, non-community use. The aim of the Community Right to Bid ('CRB') is to help to reverse this trend, enabling communities to keep local facilities open as buildings or land which further the social wellbeing of those who live or work there.
- 3.18 CRB gives communities a right to identify a building or other land that they believe to be of importance to their community's social well-being. The aim is that, if the asset comes up for sale, then they will be given a fair chance to make a bid to buy it on the open market. If the nominated asset meets the definition of an asset of community value, the local authority will list it. The owner will have a right to an internal review by the council, and a right of appeal to an independent tribunal against the result of the internal review.
- 3.19 Nothing further will happen unless and until the owner decides to dispose of the asset, either through a freehold sale, or the grant or assignment of a lease, granted for at least twenty-five years.
- 3.20 Certain types of disposal will be exempted from the scheme, such as disposals made in connection with a divorce settlement between spouses or civil partners; or a disposal made by a mortgagee exercising its power of sale. Unless an exemption applies, the owner will only be able to dispose of the asset after a specified window has expired. The first part of this window is an interim period, which will allow community interest groups to express a written intention to bid. If none do so in this period, the owner is free to sell their asset.
- 3.21 If a community interest group does express an intention to bid during this interim period, then the full window will operate. After that, the owner is again free to sell to whomever they choose, and no further window can be triggered for a protected period.
- 3.22 It is equally important to note what CRB does **not** provide for:-
- CRB does **not** restrict in any way who the owner of a listed asset can sell his property to, or at what price; nor does it confer a right of first refusal to community interest groups.

- CRB does not place any restriction on what an owner can do with their property, once listed, if it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions – it is open to the Local Planning Authority to decide that listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.

3.23 A building or other land can be nominated as an ‘asset of community value’ if the current use of the building or land **‘furthers the social wellbeing or social interests of the local community’**; or there was a time in the recent past when its use matched that criterion and it is realistic to think that there is a time in the next five years when the criterion will be satisfied again. In this context, “social interests” includes each of the following:-

- Cultural interests
- Recreational interests
- Sporting interests

3.23 Certain types of building and land are deemed **not** to be an asset of community value, for example residential property and land used by “statutory undertakers” for transport and utility purposes.

3.24 A property can only be listed as an asset of community value in response to a “community nomination”, which the Localism Act defines as one made by:

- (i) a parish council in respect of land in the parish, or
- (ii) a voluntary or community body with a local connection. This expression is further defined in regulations but, in broad terms, means a social enterprise (whether incorporated or not) or charity.

3.25 A local authority, other than a parish council, may not itself make a nomination. An owner will have a right to an internal review of a listing decision by the council. In addition, the owner will have a right of appeal to an independent tribunal, against the outcome of the review.

3.26 All owners, other than public authorities, will be entitled to claim compensation for loss or expense incurred as a result of listing and complying with any of the procedures required by the scheme. The council will be responsible for assessing such claims and, if the relevant criteria are met, paying the appropriate amount of compensation.

3.27 Based on the Scottish Right to Bid Scheme introduced in 2003, the Government has estimated that a local authority in England could expect to list 2 or 3 properties each year as assets of community value. For every successful nomination, there could be an equal number of unsuccessful nominations following the detailed assessment described above.

3.28 Government further estimates that from the list held by a local authority, approximately one property would come up for sale every 2 to 3 years, triggering the 6-month ‘moratorium’ period in which a community group could enter a bid to buy it.

- 3.29 Other than publishing the list of successful nominations, there is no statutory requirement on the council to promote the scheme. At national level, an organisation called 'Locality', a UK network of community enterprises, is publicising CRB on the 'My Community Rights' section of its website.
- 3.30 Locality, in partnership with the Social Investment Business and the Local Government Association will run the CRB service. In particular, Locality will assist community organisations to access the Community Ownership of Assets Programme which is £19m fund the Government has designated to support communities at each stage of the process from forming a group to preparing and submitting a bid.
- 3.31 Given the availability of support centrally, it is recommended that the council focuses purely on legal compliance by administering the scheme in response to community nominations and, once a nomination is successful, publishing the statutory list of the assets(s) concerned.
- 3.32 To support the scheme, it is recommended that the council provides basic information on its website about CRB and how a community nomination may be submitted.
- 3.33 The process of evaluating nominations and handling requests for listing reviews, asset disposal and compensation claims is highly technical and governed by detailed regulations. As such, the process is best managed at officer level, and it is recommended that authority be given to the Head of Property and Design and to the Head of Law to run the scheme for the council.
- 3.34 The Right, including regulations on technical aspects of the scheme, came into force on 21st September 2012. In preparation, officers have mapped the process involved in nominating and bidding for successfully listed assets, and will develop the necessary procedures to manage the scheme.
- 3.35 It is important to distinguish the Community Right to Bid from the Council's community asset transfer strategy. The asset strategy is not a product of legislation but a strategy initiated and driven by the Council which relates solely to the transfer of selected council properties to community bodies.

4. Consultation

- 4.1 The Community Right to Challenge and Community Right to Bid are statutory schemes which the Council must implement in accordance with the Legislation and Statutory Guidance. The proposed approach outlined in this report has been discussed at Leaders Group and SLT and officers have liaised with the Communities Team, Property and Design and the Corporate Procurement Team in the preparation of this report.

5. Financial Implications

There are cost implications to the council in setting up, publicising and administering a list of assets of community value, handling requests for a

review of the listing decision, communicating with interested parties when an owner wishes to sell a listed asset, and dealing with compensation claims from asset owners.

The Government has estimated that for a typical council, the scheme will require 19 days (FTE) of officer input in year 1 and 12 days for each subsequent year the scheme exists.

In addition to the cost of officers' time, the estimated annual payment by a local authority in respect of the statutory compensation scheme available to asset owners is £1200.

The costs incurred by the council in operating the scheme during the first three years of operation can be recovered from the Government. Thereafter, all operating costs and compensation pay outs will have to be met by the council directly and provision for funding this will need to be reflected in the Medium Term Financial Strategy.

CRB will create financial pressure on the Property & Design team as they will need to manage the scheme, incur one off set up costs, and resource the administration of the system once up, maintenance of the list and web site information. There are corporate costs associated with reviews/challenges and potential compensation costs. These costs will be kept under review against what can be recovered through the Government scheme and any shortfalls will need to be provided for within the budget.

Finance officer consulted: Anne Silley

Date: 14/09/12

6. Legal Implications

The Community Right to Challenge and Community Right to Bid are provided for in sections 81-108 of the Localism Act 2011 and associated Regulations. As mentioned above, the legislation in relation to the Community Right to Challenge is already in force and the Community Right to Bid is due to come into force in autumn 2012.

Due to the technical nature of the legislation, legal officers will assist in the process of evaluating expressions of interest/nominations and other aspects of the schemes, to ensure legal compliance.

Based on the process mapping already undertaken and the further preparation underway, the council will be able to meet its statutory obligations relating to both Rights.

Lawyer consulted: Elizabeth Culbert

Date: 13/09/12

7. Equalities Implications

The Communities and Equalities Team are currently carrying out a number of community events with a view to raising the profile of and answering questions about community involvement in local government and the new rights will be addressed as part of this work. For those members of the public who do not have access to the internet, basic information about the new rights and how to make nominations or expressions of interest will be made available at Town Halls and Libraries.

8. Sustainability Implications

In relation to the Community Right to Challenge, a stated aim of the introduction of this new right is to aide the sustainability and improvement of services. Equally, one of the stated aims of the Community Right to Bid is to help protect the sustainability of local communities. However, it is not guaranteed that CRB will achieve this, since the owner of a listed asset is not obliged to sell or lease the property to a community body when it is up for sale.

9. Crime & Disorder Implications

None

10. Risk and Opportunity Management Implications

For the Community Right to Challenge, there is a risk that the Council will receive numerous bids to run services and will be required to administer these and potentially run a number of additional procurement exercises which would need to be resourced. For the Community Right to Bid, there is a risk that few or none of the properties successfully nominated are put on the market. This would limit or completely negate any opportunity for a community organisation to express an interest in buying it. Similarly, as mentioned above, there is a risk that the owner of a listed asset chooses not to accept any bid put forward by a community group after the property comes onto the market.

11. Public Health Implications

None

12. Corporate / Citywide Implications

The new rights will impact on the relationship between the Council and the local community and support the council's corporate priority of creating a more sustainable city.